IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.620 OF 2002

Shri Tilakraj Dubey. ..Appellant.

V/s.

Kunjumon C. Koshy & Ors. ..Respondents.

Mr.S.K.Dubey for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 11, 2007.

P.C. :

1. None appears for the contesting respondent No.1 though served.

2. Counsel for the appellant has produced before me the decision passed by the City Civil Court dated 24th February, 2006 in S.C.Suit No.6678/98, which indicates that the suit in respect of the disputed premises has been disposed of. It has been held that the suit was not maintainable before the City Civil Court and the plaint came to be returned to the plaintiff, for being presented before the appropriate court. That decision was challenged before this Court in Appeal from Order No.422 of 2006, which has been dismissed on June 29, 2006. In view of the order passed by the City Civil Court, which has been upheld

by this Court, the basis for proceeding against the appellant for having wilfully disobeyed the orders of the Court does not survive. Besides, the appellant states through counsel, which position is supported by record that the premises in question are presently kept locked and unused condition. The appellant submits through counsel that he has no concern with the disputed premises at all. Besides, he is offering unconditional apology for not immediately acting upon the interim order in the said suit.

3. Taking overall view of the matter, although it has been found as of fact by the lower Court that the defendant No.2 was found in possession of the premises at the relevant time, however, in view of the subsequent events and the undertaking given by the appellant before this Court, the contempt action against the appellant deserves to be dropped.

4. Hence, this appeal succeeds and the order passed by the trial Court dated 19th April, 2002 in Contempt Notice of Motion No.2977 of 2001 as against the appellant/contemnor No.2 is set aside. Ordered accordingly.